TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 584

WALTER M. PIERCE, AS GOVERNOR OF THE STATE OF OREGON; ISAAC H. VAN WINKLE, AS ATTORNEY GENERAL OF THE STATE OF OREGON, AND STANLEY MYERS, AS DISTRICT ATTORNEY FOR MULTNOMAH COUNTY, STATE OF OREGON, APPELLANTS,

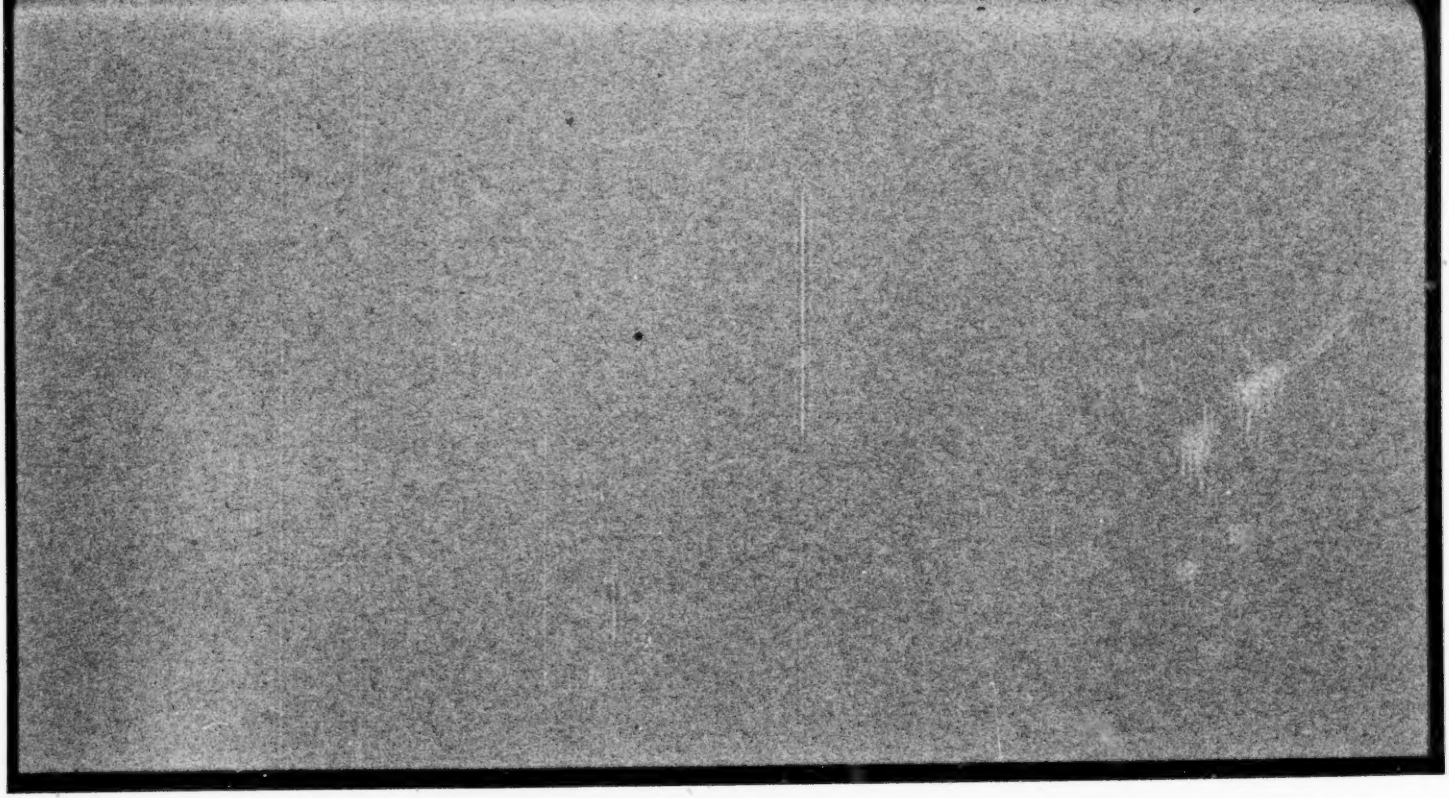
vs.

HILL MILITARY ACADEMY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

FILED AUGUST 14, 1924

(30,549)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1924

[fol. a] **IN UNITED STATES DISTRICT COURT, DISTRICT OF OREGON**

HILL MILITARY ACADEMY, a Corporation, Plaintiff and Appellee,

vs.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Defendants and Appellants

PRAYER FOR REVERSAL—Filed June 30, 1924

Come now Walter M. Pierce, as Governor of Oregon, Isaac H. Van Winkle, as Attorney General of Oregon, and Stanley Myers, as District Attorney of Multnomah County, Oregon, defendants and appellants, and pray the court for a reversal of the order and decree of injunction passed against them at the instance of the above named plaintiff and appellee in the District Court of the United States for the District of Oregon on the 31st day of March, 1924, which order and decree enjoined the enforcement of a statute passed by the people of Oregon under the initiative on the seventh of November, 1922, and found in the Session Laws for the year 1923 as chapter one of the General Laws of Oregon for 1923.

I. H. Van Winkle, Attorney General of Oregon; Willis S. Moore, Assistant Attorney General of Oregon; Stanley Myers, District Attorney for Multnomah County, Oregon, Solicitors for Defendants and Appellants.

[fol. b] Due service of the within Prayer for Reversal is admitted this 30th day of June, 1924.

John C. Veatch, Attorney for Plaintiff.

[fols. 1 & 2] CITATION—In usual form showing service on John C. Veatch; omitted in printing.

[fol. 3] [File endorsement omitted.]

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED BILL OF COMPLAINT—Filed Dec. 17, 1923

Comes now Hill Military Academy, a corporation, plaintiff above named and by leave of court first had and obtained, files this, its amended bill of complaint and for cause of suit alleges as follows:

I

That heretofore, and on the 31st day of July, 1908, plaintiff filed its Articles of Incorporation, a copy of which is hereunto attached, marked "Exhibit A", and made a part hereof, in the office of the Secretary of State of the State of Oregon, paid its filing and annual license fee, as required by law, and on said day received from said Secretary of State a certificate of filing and recording articles of incorporation, which said certificate is numbered 12824, a copy of which is hereunto attached, marked "Exhibit B", and made a part hereof, and ever since said time has been and now is a private corporation, organized, incorporated and existing under the laws of the State of Oregon, and a citizen of said state, having its principal office and place of business at the City of Portland, in the county of Multnomah, State of Oregon, and, ever since said time, has been and now is engaged in the general business of owning, operating, and conducting, for profit, an elementary, college preparatory and military training school for boys between the ages of five and twenty-one years, at said City of Portland, That plaintiff has paid its cor-[fol. 5] poration tax to the State of Oregon for the current year and is now licensed by said State to conduct its said business as a private corporation.

II

That said school, so conducted by plaintiff, is divided into two departments, to-wit: the elementary and college preparatory departments. That said elementary department is divided into eight grades, corresponding to the eight grades of the public elementary schools of the State of Oregon, and said college preparatory department is divided into four grades or years, corresponding to the four grades or years of the public high schools of the State of Oregon; that the course of study in said elementary department, and in each grade thereof, conforms to the course of study prescribed by the State Board of Education of the State of Oregon, for the public elementary schools of said state, and for each grade thereof, from one to eight inclusive; that the course of study in said college preparatory department conforms to the course of study prescribed by said State Board of Education for the public high schools of said State. That the text books used in said school, so conducted by plaintiff, in both said elementary and college preparatory departments, are the same text books prescribed by said State Board of Education and used in the public elementary and public high schools of said state, and the hours and days of instruction and the length of school terms in plaintiff's said school are the same as in said public elementary and public high schools of said state. That plaintiff's said school is accredited to various colleges and universities of the United States and the graduates from the college preparatory department of plaintiff's said school enter said colleges and universities without examination. That in addition to said course of in-[fol. 6] struction and at other times than regular school hours prescribed by said State Board of Education, plaintiff's said school

offers its students instruction in military science and training under the supervision and control of an officer assigned to said school for that purpose by the War Department of the United States.

III

That it is a part of the business so conducted by plaintiff, as aforesaid, to take as students boys who have no homes or whose homes are situated at a distance from said City of Portland, and furnish said boys with board and lodging and home surroundings in addition to and in connection with said educational training aforesaid. That for the purpose of conducting its said business, plaintiff has acquired and now owns valuable property, both real and personal, consisting of school buildings, dormatories, armory, dwelling houses, laboratories, and furnishings at said City of Portland, and a summer school and recreation camp at the town of Long Beach, in the State of Washington, all of which is now in use by plaintiff in conducting said school. That said property and equipment is of the reasonable value of one hundred and twenty thousand ($120,000.00) Dollars. That a part of said property, of a value in excess of Forty Thousand ($40,000) Dollars is of no value whatsoever except for use in connection with said school, and the remainder of said property cannot be converted and made suitable for other purposes than for use in connection with said school at a cost of less than Twenty thousand dollars ($20,000.00).

That, in addition to said physical property, plaintiff's said business is of the reasonable value of one hundred thousand dollars ($100,000.00).

IV

That plaintiff conducts said school as aforesaid, for profit, and [fol 7] has no other business other than that of conducting said school and no income other than that derived from said school. That the average number of students attending said school is one hundred (100) and the average yearly fee charged for each student is eight hundred dollars ($800.00), making a gross yearly income of eighty thousand dollars ($80,000.00), and all of the physical property, both real and personal, hereinbefore mentioned, was acquired by plaintiff from the net profits derived from said school.

V

That a yearly average of more than forty per cent of said number of students attending said school are in the elementary department thereof and are between the ages of eight (8) and sixteen (16) years and have not completed the eighth grade in accordance with the provisions of the course of study prescribed for public schools in said State of Oregon. That a yearly average of more than forty per cent of the students attending the college preparatory department in said school have previously attended the elementary department of said school and have graduated therefrom into said college

preparatory department, and said college preparatory department depends largely for its patronage upon students who have attended said elementary department and graduated therefrom. That a yearly average of more than sixty per cent of said total number of students attending said school are placed therein by their parents and guardians for a period of more than one year. That the parents and guardians of more than seventy-five per cent of the total number of students attending said school reside within the State of Oregon.

VI

[fol. 8] That the net income derived by plaintiff from conducting said school is but a small percentage of said gross income and said school cannot be conducted at a profit with an average number of less than one hundred (100) students in attendance. That in order for plaintiff to conduct said school at a profit with an average number of one hundred (100) students in attendance, it is necessary for plaintiff to purchase and to enter into contracts for the purchase of large quantities of supplies and equipment several years in advance of the current year and to enter into contracts for the employment of teachers, matrons and other employees for terms of more than one year, and to plan and contract for improvements and alterations in its said buildings, plant and equipment, and generally to lay out and plan its said business and obligate itself for the payment of large sums of money in connection therewith several years in advance of the current year.

VII

That at the general election held in the State of Oregon, on the 7th day of November, 1922, there was submitted to the legal voters of said state a certain measure in words and figures, as follows:

"A Bill for an Act to Propose by Initiative Petition to Amend Section 5259, Oregon Laws, Compulsory Education

Be it enacted by the People of the State of Oregon:

Section 1. That section 5259, Oregon Laws be, and the same is hereby, amended so as to read as follows:

Sec. 5259. Children Between the Ages of Eight and Sixteen Years. Any parent, guardian, or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense. Provided, that in the following cases, children shall not be [fol. 9] required to attend public schools.

(a) Children Physically Unable. Any child who is abnormal, subnormal, or physically unable to attend school.

(b) Children who have completed the Eighth Grade. Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) Distance from school. Children between the ages of eight and ten years inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) Private Instruction. Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school, but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian, or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the age of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5.00, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the first day of September, 1926."

That there was cast for said measure at said election a majority of the votes cast by legal voters and said measure, by reason of said election and the laws of the State of Oregon, applying thereto, is now a pretended law of said state.

VIII

That defendant Walter M. Pierce is the duly elected, qualified and acting Governor of the State of Oregon; that defendant Isaac H. Van [fol. 10] Winkle is the duly elected, qualified and acting Attorney General of the State of Oregon; and defendant Stanley Myers is the duly elected, qualified and acting District Attorney for Multnomah

County, in said State of Oregon, and each and all of said defendants are charged with the duty of enforcing the laws of said state.

IX

That said pretended law is void and violates and contravenes the Constitution of the United States and more particularly Section 10 of Article I of the Constitution of the United States, and Section I of Article XIV of the Amendments to the Constitution of the United States in that it deprives plaintiff of its property without due process of law, denies to plaintiff the equal protection of the laws and impairs the obligations of plaintiff's contracts.

X

That said defendants and each of them now publicly declare and publish that said pretended law is a valid law of the State of Oregon, and publicly declare and threaten that they and each of them will enforce said pretended law from and after the date it becomes operative by its terms.

XI

That by reason of said pretended law and defendants' threat to enforce the same when it becomes operative by the terms thereof, plaintiff's said business is now being destroyed and rendered valueless and plaintiff is now being deprived of its property rights therein; and plaintiff's said property is being depreciated in value and large percentage thereof rendered wholly valueless. That by reason of said pretended law and defendants' threat to enforce the same, parents and guardians are refusing to enter into contracts with plaintiff [fol. 11] for placing their sons and wards in said elementary department of said school and are withdrawing their sons and wards from said elementary department in said school and placing them in other schools of a like nature which are not threatened with destruction. That, by reason of said pretended law and defendants' threat to enforce the same, plaintiff is unable to enter into contracts for future supplies and equipment and for alterations, improvements and repairs in connection with said school, without which contracts plaintiff's said busines cannot be conducted at a profit, and plaintiff is unable to obtain loans from financial institutions and elsewhere to meet its future needs in conducting said business. That unless defendants are restrained from threatening to enforce said pretended law as soon as it becomes operative by the terms thereof, plaintiff will suffer an irreparable injury for which it has no plain, speedy or adequate remedy at law.

Wherefore, plaintiff prays that said pretended Law be declared to be unconstitutional and void and that this Honorable Court grant unto plaintiff an interlocutory writ of injunction enjoining and restraining defendants and each of them from publicly threatening to enforce said pretended law on and after September 1, 1926, and from

publishing and declaring that said pretended law is a valid law of the State of Oregon, and that upon the final hearing of this cause, said injunction be made perpetual and that plaintiff have such other and further relief as to the Court may seem equitable.

John C. Veatch, Attorney for Plaintiff.

[fol. 12] EXHIBIT "A" TO COMPLAINT

Articles of Incorporation of Hill Military Academy

Know all men my these presents, That Joseph A. Hill, Laura E. Hill, and J. W. Hill, being desirous of forming a corporation under the laws of the State of Oregon, have subscribed to the following articles of incorporation:

Article I

The name assumed by this corporation and by which it shall be known is Hill Military Academy.

Article II

The duration of the corporation shall be perpetual.

Article III

The business, objects and pursuit of this corporation shall be—

To conduct a military academy and school; and the corporation shall have the power and authority to purchase, own, acquire, lease, occupy and take possession of, sell, mortgage, hypothecate and pledge real and personal property, necessary, desirable or needed in the conduct of such school and academy;

And shall also have power and authority to employ teachers and all labor and assistance necessary in the conduct of such academy, fixing a course of study, appointing principles, superintendents and other persons to have charge of such school or academy;

And shall have power and authority to issue to the students who have completed the course of study prescribed by such school or academy, diplomas and certificates;

[fol. 13] And to do each and everything necessary or required to be done in the successful conduct of such school or academy.

Article IV

The principal office and place of business of the corporation shall be in the City of Portland, County of Multnomah, State of Oregon.

Article V

The capital stock of the corporation shall be the sum of one thousand dollars ($1,000.00) divided into ten (10) shares of the value of one hundred dollars ($100.00) each.

In witness whereof, we have hereunto subscribed our names to this and two other instruments of like tenor and date, at the City of Portland, Oregon, this 29th day of July, 1908.

Joseph A. Hill. (Seal.) Laura E. Hill. (Seal.) J. W. Hill. (Seal.)

Executed in the presence of John W. Reynolds, A. F. Flegel.

STATE OF OREGON,
County of Multnomah, ss:

This Certifies that on this 29th day of July, 1908, before me, the undersigned, a Notary Public in and for said county and state, personally appeared the within named Joseph A. Hill, Laura E. Hill and J. W. Hill, who are known to me to be the identical persons described in, and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses therein mentioned.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

John W. Reynolds, Notary Public for Oregon. (Seal.)

[fol. 14] File No. 12824

State of Oregon

Office of the Secretary of State

Certificate of Filing and Recording Articles of Incorporation

To all to whom these presents may come, Greeting:

Know ye, That Whereas, Joseph A. Hill, Laura E. Hill and J. W. Hill having presented Articles of Incorporation of a Corporation organized and formed for profit under and pursuant to the Laws of the State of Oregon, and paid the organization and annual license fees provided by "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc." approved February 16, 1903;

Now, therefore, I, F. W. Benson, Secretary of State of the State of Oregon, do hereby certify, that said Articles of Incorporation have been filed and recorded in the office of the Secretary of State; that the name assumed by said corporation is Hill Military Academy, the duration perpetual; the enterprise, business, pursuit or occupation:

To conduct a military academy and school; and the corporation shall have power and authority to purchase, own, acquire, lease, occupy, and take possession of, sell, mortgage, hypothecate and pledge real and personal property, necessary, desirable or needed in the conduct of such school and academy;

And shall also have power and authority to employ teachers and all labor and assistance necessary in the conduct of such academy, fixing a course of study, appointing principals, superintendents, and other persons to have charge of such school or academy;

[fols. 15 & 16] And shall have power and authority to issue to the students who have completed the course of study prescribed by such school or academy, diplomas and certificates;

And to do each and everything necessary or required to be done in the successful conduct of such school or academy.

The amount of capital stock, One Thousand ($1,000) Dollars; the date of filing its Articles of Incorporation, the 31st day of July, A. D., 1908; the location of its principal office, in the City of Portland, in the County of Multnomah, State of Oregon; the amount of the organization fee paid, Ten ($10.00) Dollars, and the amount of annual license fees paid, Nine and 20/100 ($9.20) Dollars, for the current fiscal year ending June 30, 1909.

In testimony whereof, I have hereunto set my hand and affixed hereto the seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 31st day of July, 1908.

F. W. Benson, Secretary of State. (Seal of the State of Oregon.)

Jurat showing the foregoing was duly sworn to by Joseph A. Hill omitted in printing.

[fol. 17] IN UNITED STATES DISTRICT COURT

No. E. 8660

[Title omitted]

ORDER SETTING CAUSE—Filed Dec. 27, 1923

Now at this time came the plaintiff, appearing by its attorney John C. Veatch, and having moved the Court for the issuance of a preliminary injunction in accordance with the prayer set forth in its bill of complaint herein and having requested that the time be set for the hearing of the same. Now therefore

It is ordered that the hearing of such application be set for the 15 day of January, 1924, at 10 o'clock, A. M., in the court room of the above entitled court at the United States Court Building at the City of Portland, Multnomah County, Oregon, and that not less than five days notice thereof be given to said defendants and each of them of the time and place of said hearing, and I hereby call to my assistance at the hearing of said motion the Honorable Robt. S.

Bean, District Judge of this District, and the Honorable Wm. B. Gilbert, Circuit Judge of this Circuit.

Done and dated in open Court this 27 day of December, 1923.

Chas. E. Wolverton, Judge of the District Court of the United States for the District of Oregon.

[File endorsement omitted.]

[fol. 18] [File endorsement omitted.]

[fol. 19 & 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed Jan. 3, 1924

Come now the defendants above named and move the Court to dismiss the amended bill on the ground that there is no equity therein, and that it fails to state any facts sufficient to entitle plaintiff to a decree herein.

I. H. Van Winkle, Attorney General; Stanley Myers, District Attorney for Multnomah County, Oregon; McCamant and Thompson, Attorneys for Defendants.

I certify that the foregoing motion is in my opinion well founded in law.

Wallace McCamant, of Attorneys for Defendants.

Due service of the within Motion is admitted this 3rd day of January, 1924.

John C. Veatch, of Attorneys for Hill Military Academy, plaintiff. —— ——, of Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 21] No. E. 8660

[Title omitted]

JUDGMENT—Filed March 31, 1924

To Walter M. Pierce, as Governor of the State of Oregon; Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Meyers, as District Attorney for Multnomah County, Oregon:

The plaintiff in the above entitled case having filed its bill of complaint, duly verified by Joseph A. Hill, Secretary of plaintiff cor-

poration, in the District Court of the United States for the District of Oregon, praying that an Act passed by a vote of the people of the State of Oregon, at a general election held in said State on the 7th day of November, 1922, entitled "An Act To amend Section 5259, Oregon Laws," be declared unconstitutional and void as in violation of the Constitution of the United States, and for an injunction against said defendants requiring them to refrain from certain acts hereinafter more particularly mentioned, and having applied to the Court for an interlocutory injunction and defendants having filed a motion to dismiss said bill of complaint and said motion and application having been heard by the Honorable William B. Gilbert, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, and the Honorable Charles E. Wolverton and Robert S. Bean, Judges of the District Court of the United States for the District of Oregon, and it satisfactorily appearing to the Court that it [fol. 22] is a proper case for an injunction and that sufficient grounds exist therefor and that said Act is unconstitutional and void, therefore

It is ordered that said motion to dismiss be and the same is hereby overruled and that, until further order in the premises, you the said Walter M. Pierce, as Governor of the State of Oregon, and you, the said Isaac H. Van Winkle, as Attorney General of the State of Oregon, and you Stanley Meyers, as District Attorney for Multnomah County, Oregon, and each and every one of you, do absolutely desist and refrain from publishing and declaring that a certain Act passed by a vote of the people of the State of Oregon, at a general election held in said State on the 7th day of November, 1922, entitled "An Act To amend Section 5259, Oregon Laws," is a valid law of the State of Oregon, and from threatening to enforce said Act from and after the 1st day of September, 1926, and from attempting to enforce said Act from and after said date.

Dated this 31st day of March, 1924.

Chas. E. Wolverton, Judge.

[File endorsement omitted.]

[fol. 23] [File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT

E. 8662

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY, an Educational Corporation, Plaintiff,

v.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Defendants

E. 8660

HILL MILITARY ACADEMY, a Corporation, Plaintiff,

v.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Defendants

Bowerman & Kavanaugh, Malarkey, Seabrook & Dibble, Emmons & Lusk, Frank J. Lonergan, for Plaintiff The Society of the Sisters of the Holy Names of Jesus and Mary.

John C. Veatch, for Plaintiff Hill Military Academy.

I. H. Van Winkle, Attorney General, Stanley Myers, District Attorney for Multnomah County, McCamant and Thompson, for Defendants.

Before Gilbert, Circuit Judge, and Wolverton and Bean, District Judges

OPINION—Filed March 31, 1924

[fol. 25] The plaintiff in the first of the above cases, hereafter for convenience to be called the Sisters Society, was incorporated, and now maintains its corporate powers, under the general laws of Oregon providing for the incorporation of religious, literary and charitable societies; and the plaintiff in the second case, to be called the Academy, was incorporated under the general laws providing for the incorporation of private corporations, and is maintaining its school under and by virtue of such organization. Among the powers assumed by the Sisters Society is "The care of orphans and the education and instruction of youth, and to establish and maintain academies or schools for the care and education of youth in the cities and towns of the State of Oregon." And, among those assumed by the Academy, "To conduct a military academy and school."

Each of these institutions teaches the primary or grammar grades, including children ranging from eight to sixteen years of age. Each has been in existence for many years, and has built up and acquired an extensive patronage and attendance, and owns real and personal property of great value, including equipment and laboratories for enabling it to maintain its school work; and each carries primary students through the eight grades of instruction required to be taught in the common schools, and under the supervision of the school authorities of the state. While this is true, each of these institutions engages in other lines of school work, one extending to religious and the other to military and other instruction; and their principal sources of sustenance are from tuition paid by student bodies.

There was enacted, under the initiative, on November 7, 1922, a [fol. 26] bill for the amendment of section 5259, Oregon Laws, which reads as follows:

"Children Between the Ages of Eight and Sixteen years.—Any parent, guardian or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases, children shall not be required to attend public schools:"

Among the cases are children who have completed the eighth grade;

It is alleged, in effect, in each of these cases that the defendants do now publicly declare and publish that the act is valid, wise and wholesome; that they threaten and declare that they will enforce all the provisions thereof from and after the date it becomes operative, and that all parents and guardians having children between the ages of eight and sixteen years to nurture, support and educate, who shall send them to plaintiffs' grade schools after that date, will be prosecuted as violators of the act; that, by reason thereof, patrons are withdrawing their children from plaintiffs' schools, and depleting their attendance; that, if the process continues, as it assuredly will, complainants will be deprived of their entire patronage in the grade courses, the school systems in which they have been engaged will, in large measure, be destroyed, and they will be compelled to discontinue and close all their schools long before the act goes into effect; that the value of their property is being depreciated, [fol. 27] and it will be rendered practically worthless for school or other purposes.

These suits are instituted to have the act declared void, as in contravention of the constitutional rights and privileges of plaintiffs, and to restrain defendants from insisting upon its validity, now or at any time.

Plaintiffs claim that the act is void as violative of Section 1 of the Fourteenth Amendment of the Constitution, in that it trenches upon their privileges and immunities as citizens of the United States; that it deprives them of life, liberty and property without due process of law, and the equal protection of the laws, and is violative also of that clause of Section 10, Article I of the Constitution, relating to the impairment of the obligation of contracts.

Complainants are asking for injunctive relief. Defendants have interposed motions to dismiss.

WOLVERTON, District Judge:

Without refining as to the precise political rights that corporations, whether civil, religious or educational, have and possess, and of right may assert and maintain, in this country, it is sufficient to say that it has been recognized by ample authority that, while not possessing the rights of citizens under the privileges and immunity clause of the Fourteenth Amendment to the Constitution (Waters-Pierce Oil Company v. Texas, 177 U. S., 28, 45), they do have the guarantee, along with citizens, that they shall not be deprived of their property without due process of law, nor be denied the equal protection of the laws. Smyth v. Ames, 169 U. S. 466, 526; Covington &c. Turnpike Co. v. Sandford, 164 U. S. 578, 592; Gulf, Colorado & Santa Fe Railway Company v. Ellis, 165 U. S. 150, 154; Southern Railway Co. v. Green, 216 U. S. 400, 416.

[fol. 28] The question as to equitable jurisdiction is a simple one, and it may be affirmed that, without controversy, the jurisdiction of equity to give relief against the violation or infringement of a constitutional right, privilege or immunity, threatened or active, to the detriment or injury of a complainant, is inherent, unless such party has a plain, speedy and adequate remedy at law. And in the exercise of such jurisdiction, the court may, in proper cases, restrain state officers, clothed with authority for enforcing the laws, from the threatened enforcement of a state law which contravenes the federal Constitution, wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable. Terrace et al. v. Thompson, Advance Sheets Supreme Court, No. 29, pp. 3, 4, and cases there cited.

Further than this, a party insisting that constitutional guaranties for his benefit are being violated, may also insist, as an element of infringement of such guaranties, that others upon whom he is dependent for the support and sustenance of his lawful business shall not be deprived of their constitutional rights, privileges and immunities. Thus, in Truax v. Raich, 239 U. S. 33, it appears that, under an act passed by the Legislative Assembly of Arizona, employers were prohibited, under penalty, from employing aliens to the extent of more than twenty per cent of their working force. Mike Raich, an alien employee, feeling himself aggrieved, instituted a suit against his employer and the district attorney of the proper county, to restrain the enforcement of the act. It was urged, among other things, that the servant ought not to be heard to complain for his

master, who alone was subject to prosecution. But the court answered:

[fol. 29] "The act undertakes to operate directly upon the employment of aliens and if enforced would compel the employer to discharge a sufficient number of his employees to bring the alien quota within the prescribed limit. It sufficiently appears that the discharge of the complainant will be solely for the purpose of meeting of the requirements of the act and avoiding threatened prosecution under its provisions. It is, therefore, idle to call the injury indirect or remote."

The pertinency of the court's conclusion is the more manifest in view of its previous declaration, as a premise, that the "employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will."

Likewise, in Terrace et al. v. Thompson, Attorney General of the State of Washington, supra, which was a suit to enjoin the enforcement of the anti-alien land law of that state, it appears that the Terraces and one Nakatsuka, a Japanese and an alien, were desirous of entering into a lease of realty belonging to the former. Against the contention of the Attorney General that the parties had an adequate remedy at law, the court replied, among other things:

"The owners have an interest in the freedom of the alien, and he has an interest in their freedom, to make the lease. The state act purports to operate directly upon the consummation of the proposed transaction between them, and the threat and purpose of the Attorney General to enforce the punishments and forfeiture prescribed prevents each from dealing with the other."

The same principal is directly involved, though not discussed, in the case of Nebraska District of Evangelical Lutheran Synod v. McKelvie et al., Advance Sheets Supreme Court, No. 440, read in connection with Meyer v. Nebraska, Advance Sheet No. 325.

To make the application here, the complainants in the instant cases have an interest in the parents and guardians of children of school age, and in the protection of their constitutional rights and liberties, and such parents and guardians have an interest in the [fol. 30] constitutional rights of complainants to see that their schools may be maintained for the mutual use and benefit of the parties concerned. Thus the field of inquiry is broadened, and pertains, not only to whether the complainants' constitutional rights are affected adversely by the act in controversy, but to whether the constitutional rights of the parents and guardians are also adversely affected, for if they are so affected, complainants will be deprived nevertheless, of the advantage of patrons with legal right and privilege of providing school attendance. In other words, the schools will be affected adversely, if the act is unconstitutional, whether it be by reason of an invasion of the patrons' constitutional rights and

privileges, or of an invasion of plaintiffs' inherent rights, or both. Indeed, the very pith of complainants' contention is that they cannot maintain their schools if their patronage is taken away by making it unlawful for parents and guardians to send their children to complainants' schools.

It can scarcely be contended that complainants' right to carry on their schools, whether parochial or private, is not a property right, and the right of parents and guardians to send their children and wards to such schools as they may desire, if not in conflict with lawful requirements, is a privilege they inherently are entitled to enjoy. Meyer v. Nebraska, supra, and Nebraska District of Evangelical Lutheran Synod v. McKelvie et al., supra, seem to affirm the propositions. See also, C. M. & St. Paul R. R. Co. v. Wisconsin, 238 U. S. 491; Adkins et al. v. Children's Hospital and Adkins et al. v. Lyons, Nos. 795, 796, Advance Sheets, Supreme Court.

One of the searching questions involved by the controversy is [fol. 31] whether the causes have been prematurely brought. It will be noted that the act complained against is to become effective on and after the first day of September, 1926; more than two years and five months hence. This presents one of the elements which must be considered, along with the rest, for ascertaining and determining whether, under the showing made, the complainants, or either of them, are meeting with irreparable and irremediable injury which may not be as speedily and adequately met by such remedies as the law side of the court may afford. The principal that the remedy at law, if relied upon to supplant the equitable jurisdiction, must not only be plain, speedy and adequate, but as adequate, complete, practical and efficient to meet the ends of justice as that in equity, is so well settled as to need no citation of authorities. See, however, Terrace v. Thompson, supra.

It is at once obvious that, in the very nature of the upbuilding and maintenance of parochial and private schools, when the attendance, prospective as well as acquired, is taken away or rendered unlawful, it will destroy the pursuit or occupation. If school buildings have been constructed and equipment purchased and provided, without school attendance such property must lapse into disuse, and become of no value for the purposes for which it was designed, and, of course, an irreparable loss will ensue; the paramount loss of school attendance, and a damage and practical destruction, especially for school purposes, of the school property.

Now, although the time at which the act is to become effective is somewhat remote, it is quite apparent, from the allegations of the bills, the work of destruction of complainants' occupation has already [fol. 32] set in. They are losing their patronage, traceable directly to the fact that the act is a statute duly adopted and promulgated. Parents are looking to the future, and are laying their plans to meet the exigencies to arise. The curriculum of the grade schools requires several years of attendance, and, if parents must, on the taking affect of the statute, send to the public schools, many of them are prepared to do so now, or as convenience may suggest. Hence the drawing away of complainants' patronage has set in, and will

continue with increased progression until the day when all will be lost. This is not only the alleged result of the passage of the act, but it is the most natural and consequential thing to expect. The damage, of course, is irreparable, and compensation does not afford adequate relief. The injury being of a quality that is continuous and accelerating, it must be stayed if the ends of justice are to be met.

Nor is it an answer to the dilemma that the act may be repealed before it becomes operative, or that ample opportunity is afforded for the people or the legislature to amend it so as to present a radically different question from that now involved. In all probability its provisions will remain as they now are until they become operative and the damage is done, for it is not usual to amend or repeal statutes, at least until their effect has been tested. The very purpose of placing the effective date so far ahead was to give ample time for the parochial and private schools to adjust themselves to the new conditions, which is really a confession on the part of the lawgivers that such schools are going to be hurt, and that seriously, if not irreparably.

It must be true, as expressed by Mr. Justice Brewer while sitting in the Circuit Court of Nebraska, "that the powers of a court of [fol. 33] equity are as vast, and its processes and procedure as elastic, as all the changing emergencies of increasingly complex business relations and the protection of rights can demand." Quoted in Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co., 54 Fed. 746, 751.

That the writ may be novel, or is without precedent, is not a fatal objection to its use, for the jurisdiction of a court of equity depends "rather upon the necessities of mankind, and the great principles of natural justice, which are recognized by the courts as a part of the law of the land, and which are applicable alike to all conditions of society, all ages, and all people." Dodge v. Cole, 97 Ill. 338, 368.

"Courts may amplify remedies and apply rules and general principles for the advancement of substantial justice." 32 Corpus Juris. p. 34, Sec. 13.

Of course, in the use of the writ of injunction, the court must exercise a sound and legal discretion, regulated by analogy, and by what would be manifestly just, in view of all the existing conditions.

It cannot be questioned that a party affected by an unconstitutional act need not wait until some step is taken, under the act, that would affect him injuriously. "One does not have to await the consummation of threatened injury to obtain preventive relief." Pennsylvania v. West Virginia, Advance Sheets Supreme Court, No. 15. See, also, Vicksburg Waterworks Co. v. Vicksburg, 185 U. S. 65, where the court says:

"But it is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable. The exercise of such jurisdic- [fol. 34] tion is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights."

See, further, Detroit Creamery Co. v. Kinnane, 264 Fed. 845; affirmed 255 U. S. 102.

The case of Terrace v. Thompson, supra, is one where, though the act was effective, there was no violation thereof by the parties concerned. Yet a suit to enjoin its enforcement was sustained, on the ground that a violation of the act would subject the offenders to the penalty subjoined.

Nor are we without precedent for the application of injunctive relief even prior to the time when the statute becomes effective. Palatka Waterworks v. City of Palatka, 127 Fed. 161; and Davenport v. Kleinschmidt, 6 Mont. 502, seems to be of like character.

However, considering that injunctive relief is appropriate to prevent threatened or impending irreparable injury and damage to one's property rights, it can hardly be further urged that it is inapplicable here because the suits were prematurely instituted. The present bills of complaint show, not only a threat to enforce the act when it becomes effective, but that complainants are suffering irremediable injury now, which will continue with increasing detriment and damage until their principal occupations are destroyed and they are deprived of their property and property rights. We think the suits were not prematurely brought.

It is not denied that the state, in its sovereign capacity, is entitled to the exercise of what are termed police powers. What these powers are, the courts have not attempted to define precisely. But, without [fol. 35] question, they relate to the safety, health, morals and general welfare of the public.

"Both property and liberty," says the court in Lochner v. New York, 198 U. S. 45, 53, "are held on such reasonable conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the Fourteenth Amendment was not designed to interfere."

But there is a limit to the manner in which these powers may be exercised by the state. They cannot be exercised arbitrarily and despotically, nor unless there exists a reasonable relation between the character of the legislation and the policy to be subserved. Nor is the state legislature the final judge of the limitations of the police power. Its enactments will be set aside when found to be unwarranted and arbitrary interference with rights protected by the Constitution in carrying on a lawful business or occupation in the use and enjoyment of property. In other words, the exercise of the police power is subject to judicial review, and property rights cannot be ruthlessly destroyed by wrongful enactment. Silz v. Hesterberg, 211 U. S. 31, 39; Lawton v. Steele, 152 U. S. 133, 137; Dobbins v. Los Angeles, 195 U. S. 223, 239.

In elaboration of the principle, the courts may not, however, because of the mere fact that they differ from the legislature in its views of public policy, or hold views inconsistent with the propriety of the legislation in question, interfere judicially; nor unless the act in question is unmistakably and palpably in excess of legislative power. McLean v. Arkansas, 211 U. S. 539, 547.

[fol. 36] There are certain known callings and occupations that the state may, under and in pursuance of its police powers, regulate

by reasonable interposition, but it cannot prohibit their exercise, where to do so will infringe the guaranties of the Fourteenth Amendment. Thus, employment agencies may be regulated, but not prohibited. Adams v. Tanner, 244 U. S. 590.

The right of the individual to work and earn a livelihood may not be prohibited, though the workman be an alien. Truax v. Raich, supra.

The right to contract in relation to one's business is a liberty that may not be inhibited without entrenchment upon rights guaranteed by the Fourteenth Amendment. Lochner v. New York, supra; Adkins et al. v. Childern's Hospital, supra.

The right to engage in a useful, legitimate business, not harmful or vicious, is protected under the amendment, and cannot be abrogated. Murphy v. California, 225 U. S. 623.

And the right to teach German along with the grammar school grades may not be impinged upon under the guise of legislative regulation. Meyer v. Nebraska, supra.

No one questions the proposition that our public schools are subject to a reasonable supervision of the state, through its legislature, in the exercise of its police powers, for safeguarding the health, morals and general weal of the public. Nor is it disputed that, while parents possess a natural and inherent right to the nurture, control and tutorship of their offspring, that they may be brought up according to the parents' conception of what is right and just, decent and respectable, and manly and noble in life, the state yet stands in the position of parens patriæ to, and may exercise its just powers "in preparing the child, in future life, to support itself, to [fol. 37] serve the state and in all the relations and duties of adult life to perform well and capably its part." People v. Ewer, 141 N. Y. 129, 133; State v. Shorey, 48 Or. 396, 399.

The test here is not as to these primordial and long established principles, and they are referred to only for clarifying the atmosphere, so that we may proceed intelligently to a discussion of the very crux of the cases at bar. The real test is, Has the state, through its legislative functions, the power, under the guise of police regulation, to deprive parochial and private school organizations of the liberty and right to carry on their schools for teaching in the grammar grades?

The act could not be more effective for utterly destroying the business and occupation of complainants' schools, except perhaps the college and higher preparatory grades, if it had been entitled "An Act to prevent parochial and private schools from teaching the grammar grades." This serves to emphasize the seriousness of the controversy. Indeed, the simile is no stronger than the argument for the adoption of the measure put it: "A divided school can no more succeed than a divided nation." That such is the purpose of the act is obvious and incontrovertible.

It cannot be successfully combated that parochial and private schools have existed almost from time immemorial—so long at least that their privilege and right to teach the grammar grades must be regarded as natural and inherent, as much so as the privilege and

right of a tutor to teach the German language with the grammer grades, as was held in Meyer v. Nebraska, supra. The absolute right of these schools to teach in the grammar grades (paraphrasing somewhat the language of the court in the case just cited), and the right of the parents to engage them to instruct their children, we think, is within the liberty of the Fourteenth Amendment. [fol. 38] The right of the state to establish as its school policy compulsory education within its boundaries is conceded. Practically all the states in the Union have adopted such a policy, and no one disputes its utility for reducing illiteracy and raising the standard of citizenship. But no state has ventured so far as to eliminate parochial and private schools from participating in the promotion of the policy.

Compulsory education being the paramount policy of the state, can it be said, with reason and justice, that the right and privilege of parochial and private schools to teach in the common school grades is inimical or detrimental to, or destructive of, that policy? Such schools and their patrons have the same interest in fostering primary education as the state, and appropriate regulation will place them under supervision of school authorities. So they will not escape the duty of proper primary instruction. No one has advanced the argument that teaching by these schools is harmful, or that their existence with the privilege of teaching in the grammar grades is a menace, or of vicious potency, to the state or the community at large, and there appears no plausible or sound reason why they should be eliminated from taking part in the primary education of the youth. It would seem that the act in question is neither necessary nor essential for the proper enforcement of the state's school policy.

The court in the Meyer case, in stating some things that are without doubt included by the term "liberty" as guaranteed by the Constitution, concludes, "and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." And further on the court says (allusion [fol. 39] to which has been previously made):

"Plaintiff in error taught this (German) language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment."

These declarations, although they speak of the individual, are applicable here, notwithstanding complainants are bodies corporate. Their right and privilege to teach the grammar school grades, and the privilege of parents to employ them, are the same as though the individual were conducting a private school along the same lines. The mere fact that they bear corporate names affords no basis for distinguishing them from private schools, conducted by an individual or individuals, with a corps of teachers and instructors to carry on the school work.

"The established doctrine is," continues the court, "that this liberty may not be interfered with, under the guise of protecting

the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect."

The melting pot idea applied to the common schools of the state, as an incentive for the adoption of the act, is an extravagance in simile. A careful analysis of the attendance of children of school age, foreign born and of foreign born parentage, at private schools, as compared with the whole attendance at schools, public and private, would undoubtedly show that the number is negligible, and the assimilation problem could afford no reasonable basis for the adoption of the measure. But if it be that the incentive is political, and arises out of war exigencies and conditions following thereupon, then the assimilation idea is pointedly answered by the opinion rendered in the Meyer case.

[fol. 40] "The desire of the Legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error."

So it is here, in our opinion, the state, acting in its legislative capacity, has, in the means adopted, exceeded the limitations of its power—its purpose being to take utterly away from complainants their constitutional right and privilege to teach in the grammar grades—and has and will deprive them of their property without due process of law.

Other questions have been presented, but, their decision not being necessary to a determination of the controversy involved, they are not considered.

The motion to dismiss will be denied, and a preliminary injunction will issue, restraining the defendants from threatening or attempting to enforce the act complained against.

[File endorsement omitted.]

[fol. 41] [File endorsement omitted.]

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed June 19, 1924

The above named defendants conceiving themselves aggrieved by the order and decree of injunction made and entered on the 31st day of March, 1924, in the above entitled cause, do hereby appeal

from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

I. H. Van Winkle, Attorney General; Willis D. Moore, Assistant Attorney General; Stanley Myers, District Attorney for Multnomah County, Solicitors for Defendants.

The foregoing claim of appeal is allowed in open court this 19th day of June, 1924, upon defendants filing appeal bond in the sum of $500.

R. S. Bean, District Judge.

STATE OF OREGON,
County of Multnomah, ss:

Due service of the copy of the within Petition for Appeal admitted at Portland, Oregon, this 19th day of June, 1924.

John C. Veatch, of Attorneys for Plaintiff

[File endorsement omitted.]

[fol. 43] [File endorsement omitted.]

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 19, 1924

The defendants pray an appeal from the order and decree of injunction passed on the 31st day of March, 1924, in favor of plaintiff and against the defendants and assign for error:

I

That the court erred in enjoining the enforcement of the statute enacted by the electors of Oregon under the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint, which statute is also set forth as chapter one of the General Laws of Oregon for the year 1923 in the compilation of the said General Laws of Oregon officially published by the State of Oregon.

II

The court erred in holding the statute set forth at large in the seventh paragraph of plaintiff's amended bill of complaint, which statute is also described as chapter one of the General Laws of Oregon for the year 1923 as violative of the constitutional rights of plaintiff.

III

The court erred in holding that the statute set forth at large in the seventh paragraph of the amended bill of complaint of plaintiff and [fol. 45] published as chapter one of the General Laws of Oregon for the year 1923 is unconstitutional and void.

IV

The court erred in holding that plaintiff is in a position to raise the legal questions relied upon by it and determined in its favor by the above entitled court on the 31st of March, 1924.

V

The court erred in failing to sustain the motion of defendants to dismiss plaintiff's amended bill of complaint.

VI

The court erred in failing to hold that plaintiff's suit is prematurely brought and that the injunction prayed for by plaintiff should for this reason be denied.

VII

The court erred in passing an injunction order as against the defendant, Walter M. Pierce, as Governor of Oregon.

VIII

The court erred in passing an injunction order as against the defendant, Isaac H. Van Winkle, as Attorney General of Oregon.

IX

The court erred in passing an injunction order as against the defendant, Stanley Myers, as District Attorney for Multnomah County, Oregon.

X

The court erred in restraining the expression and publication of the opinions of the defendants as to the constitutionality of the statute adopted under the initiative by the people of Oregon on the 7th of November, 1922, and published as Chapter one of the General Laws of Oregon for 1923.

XI

The court erred in passing an injunctive order which fails to specify [fol. 46] the acts on the part of defendants which are enjoined except only the expression and publication of the opinions of defendants set forth in the ninth assignment of error.

XII

The court erred in passing an injunctive order vague and uncertain as to the acts undertaken to be restrained and enjoined.

XIII

The court erred in holding that the statute so adopted under the initiative on the 7th day of November, 1922, and set forth at large in the seventh paragraph of the amended bill of complaint which statute is also published as chapter one of the General Laws of Oregon for the year 1923 in the official compilation of the said laws, is in conflict with the Constitution of the United States and particularly with the fourteenth amendment thereto.

I. H. Van Winkle, Attorney General for Oregon; Willis D. Moore, Assistant Attorney General; Stanley Myers, District Attorney for Multnomah County, Oregon, Solicitors for Defendants.

For proof of service see original citation.

[File endorsement omitted.]

[fol. 47] [File endorsement omitted.]

[fol. 48] PRAYER FOR REVERSAL—Omitted; printed side page a ante.

[fol. 49] [File endorsement omitted.]

[fol. 50] [Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed June 19, 1924

To G. H. Marsh, Clerk of the above-entitled Court:

In preparing the record on appeal in the above entitled cause, you will incorporate therein the following papers:

1. Amended bill of complaint filed December 17, 1923.

2. Motion to dismiss filed January 3, 1924.

3. Order reciting oral motion for injunction and hearing thereon and on motion to dismiss January 15, 1924.

4. Order and decree of injunction passed March 31, 1924.

5. Opinion of court in passing injunctive order March 31, 1924.

6. Petition for appeal and allowance thereof.

7. Bond on appeal and approval thereof.

8. Citation on appeal and record of proof of service thereof.

Assignment of Errors.

I. H. Van Winkle, Attorney General of Oregon; Willis D. Moore, Assistant Attorney General; Stanley Myers, District Attorney for Multnomah County, Oregon, Solicitors for Defendants.

For proof of service see original citation.

[File endorsement omitted.]

[File endorsement omitted.]

ND ON APPEAL FOR $500—Approved and filed June 1924; omitted in printing

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—Omitted; printed on page a ante

S:

OURT

I, G. H. Marsh, Clerk of the ... United States for the District of Oregon, do hereby ... foregoing pages numbered from 3 to 55, inclusive, constit... script of record on appeal from the order and judgment of ... t in the case in which Hill Military Academy, a corporation, ... aintiff and appellee, and Walter M. Pierce, as Governor of the ... tate of Oregon, Isaac H. Van Winkle, as Attorney General of the state of Oregon, and Stanley Myers, as District Attorney for Multnomah county, state of Oregon, are defendants and appellants; that the said transcript of record has been prepared by me in accordance with the præcipe filed by said appellants, and is a full, true, and complete transcript of the record of proceedings had in said court in said cause, which the said præcipe directed to be included therein, as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is $15.35, and that the same has been paid by the said appellants.

TORN PAGE

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court at Portland, in said District, this 8th day August, 1924.

G. H. Marsh, Clerk. (Seal United States Distri[illegible] Oregon.)

[fol. 57] [Endorsed:] In the United States Supreme Court. ter M. Pierce, as Governor of the State of Oregon, Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Appellants, vs. Hill Military Academy, a corporation, Appellee. Transcript of Record on Appeal from the District Court of the United States for the District of Oregon.

Endorsed on cover: File No. 30,549. Oregon D. C. U. S. Term No. 584. Walter M. Pierce, as Governor of the State of Oregon, [illegible] H. Van Winkle, as Attorney General of the State of [illegible] Stanley Myers, as District Attorney for Multn[illegible] of Oregon, appellants, vs. Hill Military [illegible] 14th, 1924. File No. 30,549.